

ST 97-17

Tax Type: SALES TAX

Issue: Orgnaizational Exemption From Use Tax (Charitable)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

APPLICANT)	DOCKET:
)	
v.)	Sales Tax Exemption
)	Denial
)	
THE DEPARTMENT OF REVENUE,)	Alan I. Marcus,
STATE OF ILLINOIS)	Administrative Law Judge
)	

RECOMMENDATION FOR DISPOSITION

SYNOPSIS:

This matter comes on for hearing pursuant to APPLICANT's (hereinafter referred to as the "applicant" or "APPLICANT") protest of the Illinois Department of Revenue's (herein referred to as the "Department") denial of APPLICANT's request for tax exempt status for purposes of purchasing tangible personal property free from the imposition of Use and related taxes as set forth in 35 **ILCS** 105/1 et seq. At issue is whether APPLICANT qualifies for exemption from such taxes as "a corporation, society, association, foundation or institution organized and operated exclusively for charitable ... purposes" within the meaning of 35 **ILCS** 105/3-5(4). Following submission of all evidence and a careful review of the record, it is recommended that the Department's tentative denial of exemption be affirmed and finalized as issued.

FINDINGS OF FACT:¹

A. The *Prima Facie* Case and Other Preliminary Considerations

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's Tentative Denial of Exemption, (Dept. Ex. No. 1), wherein APPLICANT's request for exempt status was denied.

2. APPLICANT was founded by its director, DIRECTOR, in 1988. Tr. p. 6. His original founding purpose was to provide African-Americans with an organization that could represent their interests in the north lakefront area of Chicago and the community of Rogers Park. Tr. p. 6.

3. DIRECTOR and applicant's board of directors (hereinafter the "board") envisioned that APPLICANT would address the following issues: race relations; minority advocacy; training and job placement for adults; counseling and tutorial services for youths; public education and cross-cultural understanding; immigration counseling; and providing groups in the Rogers Park community with organizational and technical assistance. Tr. p. 36.

4. Applicant also aims to provide children living in the Rogers Park area with positive role models and opportunities to participate in activities (such as field trips) that take place

1. In order to facilitate better organization and promote greater clarity, I have divided the Findings of Fact into the following categories: The *Prima Facie* Case and Other Preliminary Considerations (Findings of Fact 1 through 4); Applicant's Organizational Structure (Findings of Fact 5 through 25); Applicant's Financial Structure (Findings of Fact 26 through 29); and Applicant's Youth Programs (Findings of Fact 30 through 57).

outside of their own community. Tr. p. 18. It currently has over 100 young people involved in its various youth programs.

B. Applicant's Organizational Structure

5. Applicant was originally incorporated in 1992. Tr. p. 7. Its original Articles of Incorporation were misplaced when the organization moved its offices in 1995. Tr. p. 73. It filed amended Articles, which changed its name to APPLICANT, on June 17, 1992. Applicant Ex. Nos. 1,2.

6. The Amendments also indicate that "[t]he corporation is organized exclusively for charitable, educational, religious or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code." Applicant Ex. Nos. 1, 2.

7. Other sections of the amendments provide that:

Upon dissolution of the Corporation, the Board of Trustees shall, after paying or making provision for the payment of all liabilities of the Corporation, dispose of all the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, religious, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine.

No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation and the corporation shall not participate in or intervene (including the

publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

Id.

8. Applicant dissolved the original corporation in December of 1995. Applicant Group Ex. No. 14.

9. Prior to dissolution, the Internal Revenue Service granted applicant an exemption from federal income taxation. This exemption was granted pursuant to Section 501(a) of the Internal Revenue Code and based on the Service's conclusion that APPLICANT qualified as an organization described in Section 501(c)(3) of that statute. Applicant Ex. No. 5.

10. Applicant filed for, and was granted, reinstatement under the General Not-For-Profit Corporation Act of Illinois on January 29, 1996. Applicant Group Ex. No. 14.

11. Applicant's by-laws include the following purpose statement:

Section 1 This Corporation shall be organized and conducted as a human rights organization for the rights of every person, which includes political rights, humane alternatives to the welfare system, social, civic and educational purposes which foster health and welfare, urban renewal, law enforcement, and unity among all organizations working for humane economic, political and social development of all people, minorities, women, elderly, youths, and other isolated groups.

Section 2 No part of the net earnings, if any, of this Corporation shall inure to the benefit of any individual, and no part of its capital assets, if any, shall be distributed to any individual or Corporation organized for profit, upon liquidation.

Section 3 The Organization shall not participate in any fund raising for the exclusive benefit of any other Organization.

Section 4 The Organization shall not endorse any candidate or political party.

Section 5 The corporation shall have the authority to act with respect to areas other than the area of operation whenever such action is necessary or appropriate for the achievement of its purposes or objects.

Applicant Ex. No. 3.

12. Under its by-laws, membership in applicant's organization is restricted to community members who are at least eighteen years old. *Id*; Tr. p. 50. Membership is also divided into the following classes: individual members; family members; senior citizen members; organization members; and business members. Applicant Ex. No. 3.

13. The by-laws further provide that institutions, corporations, organizations, associations or groups may obtain membership if they: (1) have three or more members who reside or engage in the activities of the [prospective member's] group in applicant's area of operation; and (2), the prospective member is not "subversive in action or aim." *Id*.

14. Those seeking business memberships in applicant's organization must transact a "significant amount" of their business in the Rogers Park area. They also can not be "subversive in action or aim." *Id*.

15. All persons, families, groups or businesses eligible for membership in applicant's organization cannot be formally admitted to same unless they fill out an application form, submit it to APPLICANT's corporate office and pay annual dues. *Id*.

16. Members are entitled to vote in all deliberations of applicant's general membership seven days after they return their properly completed applications to applicant's corporate offices and

pay their annual dues. *Id.* They can also act as chaperones for youth organization activities and provide applicant with their opinions and advice. Tr. p. 50.

17. Dues cover a membership year which begins March 20th and ends on the ensuing March 21. [sic]. In the last month of each year, applicant sends each member a renewal notice and a statement of dues. If the dues are not paid within one month, applicant will (if necessary) send a second, and then final renewal notice to delinquent members. *Id.*

18. Applicant's board may suspend a member upon a showing of good cause, which may include (but not necessarily be limited to) non-payment of dues. Suspended members are entitled to a hearing before the board but may not vote or enjoy other membership privileges. They may, however, apply for new memberships after payment of any delinquent dues or affirmative resolution of alternative events that precipitated the suspension. *Id.*

19. By secret ballot, the board may also bring charges which result in termination of a suspended membership. Any such charge, and the actual termination, must be approved by 2/3 of those present and voting at a general membership meeting. No person whose membership has been so terminated may apply for any other class of membership within applicant's organization. *Id.*

20. The board is also vested with authority to manage applicant's daily business affairs, including establishment of dues structures for the various membership classes. *Id.*

21. The board consists of applicant's officers, ten elected directors and APPLICANT's immediate past president. *Id.* Board

members who are not officers serve two year terms. Their terms are staggered so that 10 members are elected in even numbered years and ten members are elected in odd-numbered years. *Id.* [sic].

22. Applicant's by-laws provide for the following corporate officers: President; First, Second and Third Vice-Presidents; Assistant and Recording Secretaries and Treasurer. Each officer serves a term of five years except unless incapacitated or removed by the board for non-attendance.² *Id.*

23. APPLICANT's corporate officers, along with one additional board member,³ serve on applicant's executive committee. *Id.* This committee is authorized to exercise all powers vested in applicant's board during intervals between the latter's meetings. *Id.*

24. Elected public officials, those who hold office in any political party or candidates for same who run in city, county, state, or federal elections are not eligible to serve on applicant's board. Such persons are also prohibited from serving as officers of applicant's corporation. *Id.* Officers who file petitions to run for public or party offices while serving in such capacity are deemed to have vacated their offices. *Id.*

25. APPLICANT chooses its board members and officers in elections that take place at its annual general membership meeting.

². The provisions that allow the board to declare (and fill) vacancies in its own membership are identical to the ones that govern officer vacancies except that the board is not authorized to fill the president's unexpired term. That vacancy is filled by the next senior vice president. Applicant Ex. No. 3.

³. This member of the executive committee is one of the ten non-officer board members. He or she is elected to the committee by vote of applicant's board. Applicant Ex. No. 3.

Voting is done by secret ballot unless there is only one candidate for a particular office, in which case it may be done by acclamation. Write-in voting is not allowed. *Id.*

C. Applicant's Financial Structure

26. Applicant has no capital stock. Tr. p. 12. Its directors serve without financial compensation. Tr. p. 13.

27. APPLICANT's fiscal year runs from May 1 through April 30. Tr. p. 9. An audit for the period ending May 31, 1995 [sic] shows total support and revenue of \$43,617. It also discloses expenses totaling \$36,350.00. Applicant ex. No. 4.

28. Revenues and support were attributable to the following sources:

A. Grants from foundations and corporations ⁴	\$26,750.00
B. Government Grants ⁵	\$16,519.00
C. Contributions from private donors	\$ 254.00
D. Interest Income	\$ 94.00
E. Total Support & Revenues	<u>\$43,617.00</u> ⁶

Id.

⁴. These grants came from the Omron Foundation. Tr. pp. 10, 35. Applicant has received contributions from other non-governmental sources, such as the Fel-Pro and Miller's [sic] Foundations, since this particular audit was performed. Tr. pp. 11, 35.

⁵. This particular grant came from the City of Chicago Department of Human Services. Tr. pp. 10, 35.

⁶. Based on the numbers set forth above, I conclude that 61.32% of applicant's total revenues and support was attributable to grants from foundations and corporations. I further conclude that it obtained 37.87% of same from government grants, and also, that the remainder (which amounts to less than 1%) came from the other sources listed above.

29. Expenses were apportioned as follows:

A. Salaries	\$12,000.00
B. Payroll taxes	\$ 918.00
C. Occupancy expenses	\$ 2,400.00
D. Telephone/utilities	\$ 1,067.00
E. General office expenses	\$ 1,231.00
F. Insurance	\$ 371.00
G. Professional Fees	\$14,113.00
H. Office supplies	\$ 1,124.00
I. Youth Activities	\$ 970.00
J. Depreciation	\$ 1,216.00
K. Miscellaneous expenses	\$ 1,120.00
L. Total expenses	\$36,530.00 ⁷

Id.

D. Applicant's Youth Programs

30. APPLICANT sponsors and conducts numerous youth programs in the Rogers Park area. These programs, which include a youth organization that goes on field trips and conducts its own weekly meetings, toastmasters clubs, a Big Brothers/Big Sisters program, a gospel choir, mentoring programs⁸ and an annual dinner dance, are designed to provide children with alternatives to negative street environments. Tr. pp. 14-20, 53-56.

31. Applicant recruits members and advises young people of its activities by giving out fliers and brochures. It employs mailings and community postings to distribute these materials. Tr. pp. 42-43.

⁷. The above numbers lead me to conclude that applicant's total expenses were apportioned according to the following percentages: 32% to salaries; 6.57% to occupancy expenses; 2.9% to telephone and utilities; 3.36% to general office expenses; 38.6% to professional fees; 3.07% to office supplies; 3.3% to depreciation; 3.06% to miscellaneous expenses and less than 1% each to payroll taxes, instance and youth activities.

⁸. The mentoring programs include counseling and tutoring services that are provided free of charge. Tr. p. 37.

32. The youth organization has its own membership and board of directors. Tr. p. 16. This board consists of a president, vice-president and board members, all of which act independently of Applicant's board in terms of decision-making authority and voting on their own procedures. Tr. p. 16.

33. Anyone wishing to become a member of the youth organization must come into applicant's office and obtain an application. Tr. pp. 21, 48-49.

34. The application must be signed by a parent in order to provide APPLICANT with emergency contact information as well as a release of liability for any damages attributable to circumstances beyond applicant's control to avoid. *Id.*, Tr. p. 49.

35. Once the application is completed and returned to APPLICANT's office, the child is automatically accepted for membership in the youth organization. Tr. p. 49. The member must, however, promise to abide by all rules and regulations of the youth organization. Tr. p. 49.

36. The rules and regulations include prohibitions on gang activity, use of violence, drinking, smoking, damaging property, cap wearing, vandalism and improper language. Tr. p. 49.

37. Cap wearing is prohibited in order to prevent youth organization members from being mistaken for those of a gang. *Id.*

38. Violating any of the rules and regulations subjects the offender to a verbal warning for the first offense. Second infractions result in release from the youth organization as well as a letter to the parents explaining any reasons therefor. Tr. pp. 49-50.

39. Those who join APPLICANT's youth organization may elect, but are not required to, pay a membership fee. Tr. pp. 21, 50. The organization does, nonetheless, engage in other forms of fundraising, such as washing cars, raking leaves and shoveling snow. Tr. pp. 46, 59.

40. Funds raised through these operations go to pay for field trip expenses and other youth group activities, such as admissions to Great America. Tr. pp. 16, 22, 46. Other field trips have included Chicago Water Reclamation District and Skokie courthouse (where tours were provided), the IMAX-omni theater at Navy Pier, the Bristol Renaissance Fair, the Terra Museum, the Adler Planetarium, horseback riding, roller-skating and ice-skating. Tr. pp. 14-15, 19, 22, 39, 60-61, 63.

41. Except for lunch (which applicant requests be provided by the parents) members of the youth organization do not incur any out-of-pocket expenses when going on these field trips. Any admissions charges, skating rental fees or similar costs are covered entirely by the applicant itself or the youth organization's fundraising activities. Tr. pp. 20-24, 40, 46, 51, 60, 63.

42. Those who do not belong to the youth organization are welcome to go on APPLICANT-sponsored field trips. They must, however, pay any trip expenses out of their own funds. Tr. pp. 20-24.

43. Applicant provides chaperones for these trips, attendance at which ranges from a low of 20 to a high of 50 children. Average attendance is, however, between 15 and 20. Tr. p. 21-22, 51.

44. APPLICANT also co-sponsors an academic summer camp for children. Tr. pp. 23, 31. This four-week program, which APPLICANT

sponsors in conjunction with the Lakeshore campus of Loyola University, (hereinafter the "University") is for children between the ages of 10 and 13. Tr. p. 31.

45. While the University does not charge applicant or the children for this camp, it does limit the number of campers which APPLICANT can send to a maximum of 13. The University imposes this restriction because it services other communities in the Chicago area, such as Edgewater and Uptown. Tr. p. 31-32.

46. In order to cover the cost T-shirts and 30 days worth of activities, applicant charges \$15.00 per child for the camp. Tr. pp. 23, 32. It has yet to confront a situation where a child could not afford to pay this fee. Tr. p. 32. However, APPLICANT's by-laws contain no provisions allowing fee waivers. Applicant Ex. No. 3.

47. Applicant also seeks to provide young people with opportunities to improve their public speaking skills by sponsoring toastmasters and junior toastmasters clubs. It does not charge anyone for joining these clubs or participating therein. Tr. pp. 24-25.

48. Club meetings involve discussing issues that interest young people, like school concerns or how to be a better parent. *Id.*

49. APPLICANT has also had official toastmasters members speak at some of the weekly Saturday meetings of its youth organization. These meetings, for which applicant does not charge admission, are open to the public and held at the Rogers Park Presbyterian Church, 7059 N. Greenview, Chicago, IL. *Id.*; Tr. p. 29, 40, 47.

50. Average attendance at the meetings is variable.⁹ The board of applicant's youth organization conducts each meeting according to Robert's Rules of Order. *Id.* It follows a pre-established agenda that includes old news, new news and committee reports. Tr. pp. 29, 40, 47. Issues discussed include neighborhood occurrences and dealing with bad influences. Tr. p. 40.

51. APPLICANT's (adult) board of directors coordinates and supervises the Big Brothers/Big Sisters program. It is open to any child that wishes to participate and involves pairing young people with Loyola University students and other volunteers from the community. Participants talk to young people or demonstrate any skills they may have free of charge. Tr. pp. 33, 47-48.

52. Applicant established its youth gospel choir in hopes of bringing a sense of family togetherness to the Rogers Park community and instilling an African-American religious background in those that participate. Tr. p. 26.

53. APPLICANT recruited choir members by sending out fliers to the entire grade and high school populations of the Rogers Park area. *Id.*

54. Choir membership is free of charge and open to all that wish to participate. Approximately 20 people currently sing in the

⁹. Applicant's Director, Mr. DIRECTOR, testified at Tr. p. 29, that average attendance is "[a]nywhere from 10 to 30 to 40." APPLICANT's Assistant Director, ASST. DIRECTOR, testified that, allowing for give and take on any given Saturday, attendance varies between 15, 20 and 25 people. Tr. p. 47.

choir. Most of them are of African-American descent. There are, however, a few white and Hispanic choir members. *Id.*

55. APPLICANT held its most recent end-of-the year celebration, a youth and adult dinner-dance, on June 29, 1996. Applicant Ex. No. 15. Admission was \$7.50 for children and \$15.00 for adults. APPLICANT did not waive these charges for those who could not afford to pay. Tr. p. 28.

56. Applicant's (adult) board of directors, together with that of its youth organization, helped plan this event. Tr. pp. 27-28. It included an awards ceremony that recognized accomplishments of deserving youth organization members. *Id.* Applicant also recognized all children who participated in its programs, even if they were not involved on a regular basis, through presentation of certificates or ribbons. Tr. p. 74; Applicant Ex. Nos. 16 and 17.

57. The celebration also included presentation of a theater play that members of the youth organization created, developed and produced with help from students at Loyola University. Tr. pp. 27-28.

CONCLUSIONS OF LAW:

On examination of the record established this taxpayer has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to overcome the Department's *prima facie* case. Accordingly, under the reasoning given below, the determination by the Department that APPLICANT does not qualify for exemption from Use and related taxes as a "corporation, society, association, foundation or institution organized and operated exclusively for charitable ... purposes" within the meaning of 35

ILCS 105/3-5(4) should be affirmed. In support thereof, I make the following conclusions:

A. Statutory Considerations and the Burden of Proof

Taxpayer herein claims the right to an exemption from Use and related sales taxes pursuant to 35 **ILCS** 105/3-5(4), which provides in relevant part that:

Exemptions. Use of the following tangible personal property is exempt from the tax imposed by this Act:

(4) Personal property purchased by a government body, by a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious or educational purposes ...[.]

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption and have required such party to prove by clear and convincing evidence that it falls within the appropriate statutory exemption. Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985).

B. The Basic Framework

Illinois courts have not addressed the precise issue raised by this taxpayer, which is whether not-for-profit corporation which concentrates most (if not all) of its efforts in its own community

constitutes a "corporation, society, association, foundation, or institution organized and operated exclusively for charitable... purposes ..." within the meaning of 35 **ILCS** 105/3-5(4). Nevertheless, in Yale Club of Chicago v. Department of Revenue, 214 Ill. App.3d 468 (1st Dist. 1991) (hereinafter "Yale"), the court analyzed appellant's claims for educational and religious exemptions under the Retailer's Occupation Tax Act according to the body of case law developed for analysis of property tax exemptions. While the court's analysis of the educational exemption has limited relevance to disposition of the present case, its reliance on Methodist Old People's Home v. Korzen (hereinafter "Korzen"), 39 Ill.2d 149 (1968) provides the basic framework for analyzing APPLICANT's exemption claim.

In Korzen, the Illinois Supreme Court adopted the following definition of "charity" in analyzing whether appellant's senior citizens home was exempt from real estate taxes under the Revenue Act of 1939:

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

39 Ill.2d at 157 (citing Crerar v. Williams, 145 Ill. 625 (1893)).

The Korzen court also observed that the following "distinctive characteristics" are common to all charitable organizations:

- 1) they have no capital stock or shareholders;

2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;

3) they dispense charity to all who need and apply for it;

4) they do not provide gain or profit in a private sense to any person connected with it; and,

5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Id.

Like Section 105/3-5(4), the statute at issue in Korzen used the word "exclusively" to modify "charitable ... purposes." Thus, in applying the above criteria, it must be remembered that "exclusively" means "the primary purpose for which property is used and not any secondary or incidental purpose."¹⁰ Korzen, supra at 157. See also, Gas Research Institute v. Department of Revenue, 145 Ill. App. 3d 430 (1st Dist. 1987); Yale, supra; Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993).

C. Applicant's Organizational Documents

The first step in determining whether an organization is charitable is to consider the provisions of its charter. Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794

¹⁰. The present case focuses on applicant's operations, not its use of real estate. Thus, it seems appropriate to replace those portions of the above definition which refer to use with language that reflects APPLICANT's primary function as reflected in its organizational documents and actual operations. Any references to secondary or incidental use should likewise be changed to secondary or incidental function.

(3rd Dist. 1987) (hereinafter, "MTA"). In making such consideration, it must be remembered that "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively charitable activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." MTA at 796. Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id.*

Bearing these principles in mind, I note that applicant's Amended Articles of Incorporation declare that APPLICANT is organized for exempt purposes. These declarations are nonetheless inconsistent with the purpose statements contained in APPLICANT's bylaws, which indicate that applicant "shall be organized as a human rights organization, for the rights of every person, which includes political rights, humane alternatives to the welfare system, [etc.]"

This inconsistency makes it difficult for me to ascertain whether APPLICANT is organized primarily for charitable or political purposes. In resolving this dilemma, I must consider that applicant's by-laws prohibit political figures from serving as officers of its corporation or obtaining seats on its board. I am also bound to recognize that the bylaws forbid the organization itself from endorsing any political party or candidate.

Despite these prohibitions, I note that section five of the purpose statement grants the corporation "authority to act with respect to areas other than the area of operation whenever such action is necessary or appropriate for the achievements of its

purposes or objects." Given that section one of this *same statement* indicates that applicant is organized and conducted "for the rights of every person, which [include] *political rights*, ...[,]" it seems factually impossible for applicant to fulfill this stated mission without engaging in *some sort* of political activity. Therefore, it does not seem unreasonable for me to conclude that applicant's bylaws implicitly authorize it to conduct such activity whenever "necessary or appropriate" to fulfill the objectives set forth in section one.

Notwithstanding the above, I would also note that applicant's by-laws contain no specific wording or reference to charity. Illinois courts have, on more than one occasion, indicated that lack of such wording in organizational documents can provide evidence that the applicant is not in fact organized for exempt purposes. People ex. rel. Nordlund v. Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Albion Ruritan Club v. Department of Revenue, 209 Ill. App.3d 914 (5th Dist. 1991). (hereinafter "ARC"). Based on these holdings, as well as the aforementioned inconsistencies, I conclude that applicant has failed to prove that it is organized primarily for charitable, rather than political, purposes.

The preceding conclusion is not altered by other provisions of applicant's amended Articles of Incorporation and by-laws. Those that prohibit APPLICANT from devoting a substantial amount of its activities to political operations are inconsistent with the aforementioned sections of its by-laws. Moreover, such provisions, as well as those that prohibit pecuniary profit and mandate certain distributions in the event of dissolution, are mere statements in organizational documents. Therefore, such statements, in and of

themselves, do not excuse APPLICANT from proving the exempt nature of its actual operations. MTA, *supra*.

A similar rationale applies to APPLICANT's exemption from federal income tax. This exemption, standing alone or taken in conjunction with the statements in applicant's organizational documents, does not establish that APPLICANT actually operates for exclusively charitable purposes. *Cf. People ex rel County Collector v. Hopedale Medical Foundation*, 46 Ill.2d 450 (1970). Moreover, while this exemption establishes that APPLICANT is a "charity" for purposes of Sections 501(a) and 501(c)(3) of the Internal Revenue Code, those Sections do not preempt Section 105/3-5(4) or the other statutory provisions governing Illinois Use Tax exemptions. Consequently, neither this exemption, nor the statements contained in taxpayer's organizational documents, are dispositive of its entitlement to exemption from Use and related taxes under Illinois law. For this and all the aforementioned reasons, MTA mandates that any remaining analysis must focus on whether applicant's actual operations fall within the criteria established in Korzen.

Numerous provisions of applicant's by-laws suggest that applicant does not. For example, the by-law's authorize applicant's board to establish dues structures for the various membership classes. Imposition of such dues does not, *ipso facto*, warrant denial of applicant's request for exempt status. However, the absence of provisions authorizing the board to waive dues or otherwise confer membership on "persons who need and seek the benefits offered but are unable to pay ..." is distinctly non-charitable. Small v. Pangle, 60 Ill. 2d 510, 518 (1975); Du Page

County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 471 (2nd Dist. 1995).

Applicant's by-laws also authorize the board to suspend a member or bring charges which result in termination of a suspended membership. Such provisions may serve legitimate disciplinary purposes. They nonetheless lack the "warmth and spontaneity indicative of charitable impulse." Korzen, *supra* at 158. For this reason, and because the bylaws specifically provide that membership is conditioned on payment of annual dues (non-payment of which can result in suspension), I conclude that membership in applicant's organization is, in reality, limited to dues paying members.

I also note that membership in applicant's organization is, according to the plain language of its by-laws, restricted to members of the Rogers Park community who are at least 18 years of age. Such a restriction makes it impossible for children to become members of applicant's organization. Hence, it is logically impossible for me to reconcile applicant's goal of benefiting community children with a restriction that denies membership to the very population it purports to serve. Based on this inconsistency, as well as the evidence establishing that the youth organization acts independently of applicant's board and raises its own funds, I conclude that APPLICANT does not operate primarily for the benefit of neighborhood children. Rather, its operations primarily benefit those who belong to its organization.

In Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956), (hereinafter "Rogers Park"), the Illinois Supreme Court established the now well-settled principle that denies exempt status to

organizations that operate primarily for the benefit of their own members. See also, Morton Temple Association, Inc. v. Department of Revenue, 158 Ill. App. 3d 794 (3rd Dist. 1987); DuPage Art League v. Department of Revenue, 177 Ill. App. 3d 895 (2d Dist. 1988); (hereinafter "Morton Temple"); Pontiac Lodge No. 294, AF and AM v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993). These courts have found such organizations more akin to private clubs than charitable institutions in that the dominant purpose of their operations is to benefit their own members rather than the general public. Rogers Park at 291-292. Thus, such organizations do not "dispense charity to all who need and apply for it" as required by Korzen.

D. Applicant's Financial Structure

APPLICANT's financial structure provides additional evidence of its non-exempt operations. Korzen, requires that a charity derive its funds mainly from public and private charity and hold such funds in trust for those they purport to benefit. (See, *supra* at p. 16.). APPLICANT derives its revenues from appropriate sources. However, less than 1% of its expenditures are devoted to youth activities.

The Rogers Park, *supra*, court found it significant that the record before it contained no evidence of "any expenditures by plaintiff for charitable purposes." Rogers Park, *supra* at 291. See also Morton Temple Association, *supra* at 796. While the instant record discloses that applicant makes some expenditures in furtherance of a charitable purpose (to wit, youth activities), the *de minimus* percentage thereof establishes that such expenditures are

clearly incidental to financing APPLICANT's own non-exempt operations.

In ARC, *supra*, the court denied exempt status to an organization that spent approximately 69% of its gross receipts (\$3,009.10 of \$4,332.69) on building maintenance, insurance and other operational expenses. The court found such expenditures indicative of appellant's primary purpose, which it concluded was "to maintain its property and pay for its monthly meetings." ARC at 919. See also, Auburn Park Lodge No. 789 v. Department of Revenue, 95 L 50343 (Circuit Court of Cook County, September 6, 1996), (Organization which disbursed 7% of its total income to charity denied exemption because primary disbursements were to building expenses, membership costs and other fraternal activities for members).

Here, APPLICANT's audit (Applicant Ex. No. 4) establishes that all its disbursements, save a very minimal percentage, are spent in furtherance of its own operating expenses. Furthermore, its Charitable Organization Supplement (Applicant Ex. No.13) discloses that APPLICANT did not make any grants to other charitable organizations during the period which began January 30, 1994 and ended June 30, 1995. [sic]. For this and all the reasons stated above, I conclude that applicant does not satisfy the requirement, set forth in Korzen, Rogers Park and ARC, of disbursing its funds for primarily charitable purposes.

E. Other Considerations Affecting Applicant's Exempt Status

Much of the evidence adduced at hearing centered around applicant's youth operations. The preceding analysis has demonstrated, via examination of APPLICANT's organizational documents

and financial structure, that applicant's primary purpose is not dispensing charity to neighborhood children. Even assuming *arguendo* this is its primary purpose, APPLICANT would not qualify for exemption because, as demonstrated below, many of its youth programs do not satisfy the criteria set forth in Korzen.

For example, members of applicant's youth group can be expelled therefrom for violating any of its rules for a second time. I recognize and appreciate the legitimate disciplinary concerns which underlie this action. However, the act of expulsion is, by its very nature, distinctly non-charitable because it effectively prevents charity from being dispensed to all who need and apply for it. Korzen, *supra*.

This rationale also applies to the evidence which establishes that APPLICANT does not waive the admission fee for its end of the year celebration. While I agree with DIRECTOR that this policy is designed to further an exempt purpose, (to wit, foster personal responsibility among children), it prevents those who cannot afford to pay from attending the celebration. Thus, under the reasoning set forth above, I conclude such action is inconsistent with charitable impulse.

Also of import is the fact that non-members of the youth organization cannot go on field trips unless they pay their own way. Such a restriction destroys exempt status in two respects: first, as noted above, it provides evidence that participation is denied to members of the general public who cannot afford to pay; and second, it establishes that youth group activities are (like those of applicant's own organization) in fact restricted to members.

Consequently, under the reasoning set forth in Rogers Park, *supra*, I conclude that applicant does not qualify for exemption based on the operations of its youth organization.

With respect to the youth camp, I note that applicant's by-laws are silent as to the subject of fee waivers. In addition, APPLICANT has yet to confront a situation in which waiver would be invoked because a prospective camper could not afford to pay the fee. Absent appropriate waiver provisions, and without affirmative evidence relieving the speculation inherent in circumstances which APPLICANT has yet to address, I conclude that applicant has failed to prove the charitable nature of its operations vis-a-vis the camp. *Cf.* Small v. Pangle, *supra*.

Concern for speculation extends to other areas of APPLICANT's youth operations. For example, applicant advises young people of its activities by giving out fliers and brochures. However, applicant did not introduce any of the material it distributes into the record. Absent such evidence, I am unable to discern whether the general public knows of such activities or that applicant provides some of them, (i.e. toastmasters, Big Brothers/Big Sisters, the gospel choir) free of charge. *Cf.*, Highland Park Hospital v. Department of Revenue, 155 Ill. App.3d 272 (2d Dist. 1987), (hereinafter "HPH").

Appellant in HPH circulated advertisements to promote the center's services. Among other things, these advertisements described the available services and set forth appellant's hours. They also advised that care was available without appointment and that services were provided on a low-cost basis when compared to other facilities. However, the advertisements did not mention that

free care was available to those unable to pay. The court viewed this omission as a failure of proof because it raised doubts as to whether members of the general public in fact knew free care was available at the allegedly-exempt facility. HPH at 280.

Notwithstanding applicant's failure to submit advertisements, the testimony of one of its witnesses, WITNESS, (Tr. pp. 62-65), raises serious doubts as to whether the general public knows about some of APPLICANT's programs. WITNESS testified that she was involved with APPLICANT's activities but did not know of the Big Brothers/Big Sisters program. Tr. p. 64. If someone involved with APPLICANT's other programs did not know about Big Brothers/Big Sisters, I find it highly unlikely that the general public would be aware of this program.

Moreover, WITNESS testified that no one from APPLICANT had ever helped her with her homework. Tr p. 64. Based on this testimony, I also express doubts as to the public's knowledge of APPLICANT's mentoring and tutoring programs. Therefore, consistent with the holding in HPH, I conclude that applicant has failed to prove that it is an organization exempt from taxation under Section 105/3-5(4).

The remaining evidence of record does not alter the preceding conclusion. All of the letters attesting to the beneficial nature of UPF's operations (Applicant Group Ex. No. 18) are heresay. While I must afford such letters their natural probative value, elementary principles of evidence prohibit me from allowing them to outweigh the testimony from members of applicant's own youth organization (Tr. pp. 58-65) which was given in person and subject to cross-examination.

Such testimony is competent to verify the youth organization's activities. Nonetheless, it falls short of establishing that such activities are conducted for the general public's benefit rather than that of the members themselves. In addition, the testimony of Ora Martin Harris, a member of applicant's executive board, (Tr. pp. 52-58) must be discounted as self-serving insofar as it came from a member of APPLICANT's own organization rather than a member of the general public. For this and all the aforementioned reasons, I reiterate that while APPLICANT undertakes many laudable and public-spirited endeavors, its operations do not qualify as charitable within the meaning of Illinois law.

WHEREFORE, for the reasons set forth above, it is my recommendation that the Department's Tentative Denial of Exemption be affirmed.

Date

Alan I. Marcus,
Administrative Law Judge